

Cynthia L. Walker  
Shelby K. Towe  
BOONE KARLBERG P.C.  
201 West Main, Suite 300  
P. O. Box 9199  
Missoula, MT 59807-9199  
Phone: (406) 543-6646  
Fax: (406) 549-6804  
cwalker@boonekarlberg.com  
stowe@boonekarlberg.com  
*Attorneys for Defendant J.P. Gallagher*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

THE IMPERIAL SOVEREIGN COURT  
OF THE STATE OF MONTANA; ADRIA  
JAWORT; RACHEL CORCORAN;  
MONTANA BOOK COMPANY;  
IMAGINE BREWING COMPANY, LLC  
d/b/a IMAGINE NATION BREWING  
COMPANY; BUMBLEBEE AERIAL  
FITNESS; MONTANA PRIDE; THE  
WESTERN MONTANA COMMUNITY  
CENTER; THE GREAT FALLS LGBTQ+  
CENTER; THE ROXY THEATER; and  
THE MYRNA LOY,

Plaintiffs,

v.

AUSTIN KNUDSEN; ELSIE ARNTZEN;  
and J.P. GALLAGHER; and THE CITY  
OF HELENA,

Defendants.

CV 23-50-BU-BMM

**DEFENDANT J.P. GALLAGHER'S  
RESPONSE TO PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

Defendant J.P. Gallagher (“Gallagher”) provides the following response to Plaintiffs’ motion for a preliminary injunction (Doc. 4) <sup>1</sup>.

## **INTRODUCTION**

Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 4) does not seek any relief against Gallagher. Plaintiffs’ motion seeks to prevent Defendants Austin Knudsen, Elsie Arntzen, and the City of Helena from enforcing House Bill 359 (“HB 359”) pending the Court’s determination of HB 359’s constitutionality. (Doc. 4, p. 2; Doc. 5, pp. 2, 35) The only claims against Gallagher in this action are the constitutional claims alleged by Plaintiff Adria Jawort (“Jawort”) in Counts I and II of the First Amended Complaint. (Doc. 3, pp. 38-40)

As such, Gallagher does not take a position on whether the Court should issue a preliminary injunction against any of the other Defendants or the constitutionality of HB 359. Notwithstanding Gallagher’s lack of a position regarding the Court’s issuance of a preliminary injunction or the constitutionality of HB 359, he is submitting this response to Plaintiffs’ motion to address the allegations regarding him contained in Plaintiffs’ brief (Doc. 5).

---

<sup>1</sup> Since the Court granted Plaintiffs’ request for a temporary restraining order, this response only applies to the request for preliminary injunction.

## RESPONSE BRIEF

As acknowledged by Plaintiffs throughout the documents filed by them in this action to date, it is difficult for reasonable persons to determine what is and what is not restricted by HB 359 and to determine who may be subject to the criminal and civil penalties associated with violating HB 359. (Doc. 3, ¶¶ 83-84, 86-88, 131, 136; Doc. 5, pp. 8-11, 21, 28-29, 32) As Plaintiffs stated in their brief, HB 359 bans “drag story hours” in libraries during regular operating hours. (Doc. 5, p. 2); HB 359 § 3(2). HB 359 defines “drag story hour” as “an event hosted by a drag queen or drag king who reads children’s books and engages in other learning activities with minor children present. HB 359 § 1(3). “Drag queen” is defined as “a male or female performer who adopts a flamboyant or parodic feminine persona with glamorous or exaggerated costumes and makeup.” HB 359 § 1(2). “Drag king” is defined as “a male or female performer who adopts a flamboyant or parodic male persona with glamorous or exaggerated costumes and makeup.” HB 359 § 1(1).

Pursuant to HB 359 § 3(4), a library, library personnel, a public employee, an entity described in subsection (3)(b) (i.e., a location owned by an entity that receives any form of funding from the state), or an employee of the entity, convicted of violating the prohibition under § 3 shall be fined \$5,000. In addition, pursuant to HB 359 § 4(1), a minor who attends a performance in violation of HB 359 § 3 may bring an action within 10 years from the date the cause of action

accrues against a person who knowingly promotes, conducts, or participates as a performer in the performance. If the minor, or person bringing suit on the minor's behalf, prevails, the court shall award actual damages, including damages for psychological, emotional, economic, and physical harm, reasonable attorney fees and costs incurred in bringing the action, and statutory damages of \$5,000. HB 359 § 4(2) and (3).

Prior to Jawort's talk at the BSB Public Library scheduled to occur on June 2, 2023, Jawort posted a message on Twitter stating:

“PROHIBITING DRAG STORY HOUR IN SCHOOLS AND LIBRARIES...”

And I will def have a book & sexuality will be discussed & minors may be present, & the State of Montana doesn't legally recognize people being trans, so...

[Photo of HB 359's definition of drag queen next to photo of Jawort]

I do an LGBTQ/2 Spirit history lecture at a library June 2.

I'm really entertaining at this one, too.

#MostHumblest

BUT this literally might be illegal in Mont. as a flamboyantly dressed trans woman.

I don't get paid, but in fascist red state you pay state 4 “crimes” instead. 😊

See copy of post attached as Exhibit A to Declaration of J.P. Gallagher.

In another social media group chat prior to her scheduled talk discussing doing a drag queen story hour at a church, Jawort stated: “I would do a drag queen story hour there and then sue for 1<sup>st</sup> Amendment. In fact I have an event AT the

Butte library June 2d talking about LGBTQ history.” See copy of group chat thread attached as Exhibit B to Declaration of J.P. Gallagher.

Gallagher was unaware that a librarian at the BSB Library sent an email on June 1, 2023 to numerous people, including Jawort, informing them that Jawort’s talk scheduled on June 2, 2023 was canceled because Gallagher and the BSB County Attorney “have decided it is too much of a risk to have a trans-person in the library.” See Declaration of J.P. Gallagher, ¶ 7 (Aug. 4, 2023). This statement is not accurate and was not authorized by BSB to be made by the librarian. *Id.*

Based on the ambiguous language of HB 359, possible criminal penalties and civil liability associated with violating HB 359, and Jawort’s statements, BSB decided to cancel Jawort’s talk at the BSB Library out of an abundance of caution until it could ensure that Jawort’s talk would not violate HB 359. See Declaration of J.P. Gallagher, ¶ 6.

On June 1, 2023, Gallagher attempted to call Jawort to discuss her scheduled talk, but she declined to speak with him. *Id.*, ¶ 9. The following day, Gallagher also sent a letter to Jawort explaining BSB’s decision to cancel her talk at the BSB Library. In his letter, Gallagher stated BSB is open to discuss with Jawort rescheduling her talk with her assurance and appropriate parameters in place to ensure that HB 359, while it remains the law, will not be violated. *Id.*, ¶ 11. Gallagher went on to state that he would like to meet with Jawort to figure out a solution that will allow her to present her talk and that he would be happy to

schedule a time to meet with her at her convenience to talk through BSB's concerns and come up with a solution. *Id.*, ¶ 13. To date, Jawort has not contacted Gallagher to discuss rescheduling her talk.

Instead, on June 8, 2023, Jawort's attorney sent a litigation hold letter to BSB County Attorney Eileen Joyce stating that Jawort will provide no assurance that she will comply with HB 359. See Declaration of Eileen Joyce, ¶ 4 (Aug. 4, 2023). The letter also stated Jawort intends to file a federal lawsuit for deprivation of her constitutional rights under the First and Fourteenth Amendments, which is what occurred. *Id.*; (Doc. 1).

Prior to the filing of the complaint (Doc. 1), Jawort gave the same talk she intended to give at the BSB Library at the Carpenter's Union Hall in Butte on June 20, 2023. ¶ 14. Despite this, Jawort realleged her constitutional claims against Gallagher in the First Amended Complaint filed on July 17, 2023. (Doc. 3)

On July 28, 2023, the Court issued a temporary restraining order enjoining Defendants Austin Knudsen and Elsie Arntzen from enforcing HB 349. (Doc. 13) On August 3, 2023, Gallagher requested that the undersigned attorney extend an invitation to Jawort, through her attorneys, to speak at the BSB Public Library. See Declaration of J.P. Gallagher, ¶ 15. As of the time of filing of this response, Jawort has not contacted the Library Director to schedule a date and time to speak at the BSB Library. *Id.*, ¶ 13.

BSB made reasonable efforts to ensure that Jawort's talk at the BSB Library would not violate HB 359 to protect not only itself from exposure to potential criminal penalty<sup>2</sup> and civil liability, but to protect its employees. Gallagher attempted to communicate with Jawort to address BSB's concerns to come up with a solution that would allow her to give her scheduled talk at the Library, but Jawort declined to speak with him. BSB also invited Jawort to speak at the Library, but as of the time of filing of this response has not received a response to its invitation.

### CONCLUSION

Neither Gallagher nor BSB deprived Jawort of any of her constitutional rights. To the contrary, Gallagher made reasonable efforts to protect BSB and its employees from exposure to criminal penalty and civil liability while HB 359 was in effect. Accordingly, Gallagher denies all allegations made against him by Jawort.

DATED this 4th day of August, 2023.

/s/ Cynthia L. Walker  
Cynthia L. Walker  
BOONE KARLBERG P.C.  
*Attorneys for Defendant J.P. Gallagher*

---

<sup>2</sup> Not only could BSB and its employees been subject to penalties associated with violating HB 359, but as elected officials, Gallagher and County Attorney Eileen Joyce could have faced possible charges of official misconduct under Mont. Code Ann. § 45-7-401 for allowing a talk at the Library that may be prohibited by HB 359.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7.1(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 points, is double-spaced, and contains approximately 1,456 words, excluding the parts of the brief exempted by L.R. 7.1(d)(2)(E).

DATED this 4th day of August, 2023.

/s/ Cynthia L. Walker  
Cynthia L. Walker  
BOONE KARLBERG P.C.  
*Attorneys for Defendant J.P. Gallagher*